UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
LIND, KRAUSS, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E1 JONATHAN T. JORDAN
United States Army, Appellant

ARMY 20130366

Headquarters, Fort Carson
Timothy Grammel, Military Judge
Colonel John S.T. Irgens, Staff Judge Advocate (pretrial)
Colonel Paul P. Perrone, Jr., Staff Judge Advocate (recommendation)
Lieutenant Colonel Stephanie D. Sanderson, Staff Judge Advocate (addendum)

For Appellant: Major Amy E. Nieman, JA; Captain Brian D. Andes, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Major A.G. Courie III, JA; Major John K. Choike, JA; Captain Scott L. Goble, JA (on brief).

27 April 2015

SUMMARY DISPOSITION

LIND, Senior Judge:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of one specification of desertion terminated by apprehension, four specifications of absence without leave, and two specifications of wrongful use of controlled substance in violation of Articles 85, 86, and 112, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. §§ 885, 886, 912 (2006). The military judge sentenced appellant to a bad-conduct discharge and confinement for nine months. Pursuant to a pretrial agreement, the convening authority approved only so much of the sentence as provided for a bad-conduct discharge and confinement for eight months. The convening authority also credited appellant with 135 days against the sentence to confinement.

This case is before the court for review under Article 66, UCMJ. Appellant assigns one error alleging dilatory post-trial processing between action by the

convening authority and receipt of the record of trial by this court. The government concedes that the processing in this case was slow and asks this court to grant appellant relief under Article 66(c), UCMJ, by reducing appellant's sentence by one month of confinement. We accept the government's concession and will grant relief in our decretal paragraph.

Pursuant to *United States v. Moreno*, we apply a presumption of unreasonable delay in cases where the record of trial is not docketed at this court within thirty days of the convening authority's action. 63 M.J. 129, 142 (C.A.A.F. 2006). In appellant's case, there was a 116-day delay from action until this court received the record, which is facially unreasonable and triggers our analysis of the remaining *Moreno* factors: the reasons for the delay; the appellant's assertion of the right to timely review and appeal; and prejudice. *Id.* at 135, 142-43.

The reasons for the delay weigh in appellant's favor because the government concedes in its brief that: "the government cannot provide a reasonable explanation for the length of the delay from the convening authority's action until the mailing of the [record]" to the court. However, appellant did not assert his right to timely post-trial processing until submission of his brief eight months after the record was docketed with this court. Appellant has not alleged any prejudice resulting from the post-trial delay, and he has not demonstrated that "in balancing the other three factors, the delay [was] so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." *United States v. Canchola*, 64 M.J. 245, 247 (C.A.A.F. 2007) (per curiam) (quoting *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006)); *see also Moreno*, 63 M.J. at 138-41. Thus, we find there was no due process violation in this case.

Though we find no prejudice as a result of the excessive delay, the court must still review the appropriateness of the sentence in light of the unexplained dilatory post-trial processing. UCMJ art. 66(c); *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) ("[Pursuant to Article 66(c), UCMJ, service courts are] required to determine what findings and sentence 'should be approved,' based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay."). *See generally Toohey*, 63 M.J. at 362-63. Upon review of the entire record to include the unexplained lengthy dilatory post-trial processing of appellant's case and the government's request that we grant appellant relief, we find it appropriate to set aside one month of appellant's confinement.

CONCLUSION

The findings of guilty are AFFIRMED. After considering the entire record, the court affirms only so much of the sentence as provides for a bad-conduct discharge and confinement for seven months. All rights, privileges, and property, of

which appellant has been deprived by virtue of that portion of the sentence set aside by this decision, are ordered restored. *See* UCMJ art. 75(a).

Judge KRAUSS and Judge PENLAND concur.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court